

EXHIBIT A

CASE SUMMARY

CASE NO. 12-1274

LESLIE MOCK VS. CARDWORKS SERVICING, LLC
AND CARSON SMITHFIELD, LLC§ Location: 274th District Court
§ Judicial Officer: Steel, Gary L.
§ Filed on: 06/29/2012

CASE INFORMATION

Case Type: Other Civil Cases - District

PARTY INFORMATION

Plaintiff	Mock, Leslie	Lead Attorneys Kleinpeter, Amy E. Clark Retained 512-850-5290(W)
Defendant	CardWorks Servicing, LLC	Forster, B. David L. Retained 512-305-4700(W)
	Carson Smithfield, LLC	Forster, B. David L. Retained 512-305-4700(W)

DATE

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS

06/29/2012	<input checked="" type="checkbox"/> Plaintiff's Original Petition (Open Case)
06/29/2012	<input checked="" type="checkbox"/> Court's Docket Sheet
06/29/2012	<input checked="" type="checkbox"/> Correspondence Letters
06/29/2012	Civil Case Information Sheet (TRCP 78a) <i>req via e-filing</i>
07/02/2012	<input checked="" type="checkbox"/> Citation <i>Cardworks Servicing, LLC</i>
07/02/2012	<input checked="" type="checkbox"/> Citation <i>Carson Smithfield, LLC</i>
08/03/2012	<input checked="" type="checkbox"/> Defendant's Original Answer <i>Defendants' Plea in Abatement and, Subject Thereto, Original Answer</i>

12-1274

Filed: 06/29/2012

CIVIL DOCKET



10070012819487

Other Civil Cases - Dist	274th District Court
LESLIE MOCK VS. CARDWORKS SERVICING, LLC AND CARSON SMITHFIELD, LLC	
Plaintiff Mock, Leslie	Lead Attorney Klempeter, Amy E. CI
Defendant CardWorks Servicing, Carson Smithfield, L.L.	Lead Attorney

FILED
12 June 29 P5:19
Beverly Crumley
District Clerk
Hays District

No. 12-1274

Leslie Mock

Plaintiff

V.

CardWorks Servicing, LLC and

Carson Smithfield, LLC

Defendants

IN THE DISTRICT COURT

63 4 TH JUDICIAL DISTRICT

HAYS COUNTY TEXAS

Plaintiff Leslie Mock (“Ms. Mock”) brings suit against Defendants CardWorks Servicing, LLC and Carson Smithfield, LLC for violations of the Telephone Consumer Protection Act (“TCPA”).

1. PRELIMINARY MATTERS

1. Plaintiffs intend to conduct discovery under Level 2 of Rule 190.3 of the Texas Rules of Civil Procedure.
2. Venue is proper in Hays County, Texas because all or a substantial part of the events or omissions occurred in Hays County. *See Tex. Civ. Prac. & Rem. Code §15.002(a)(1).*
3. Plaintiff Leslie Mock is an individual located at 510 Terrace Canyon Drive, Dripping Springs, Texas 78620.
4. Defendant CardWorks Servicing, LLC (hereinafter “CardWorks”), is a Limited Liability Corporation from New York, incorporated in Delaware, and doing business throughout the State of Texas. CardWorks can be served at their registered agent, CSC-Lawyers Incorporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.
5. Defendant Carson Smithfield, LLC (hereinafter Carson), is a Limited Liability Corporation from New York (same address as CardWorks), incorporated in Delaware, and doing business throughout the State of Texas. Carson can be served at their registered agent, CSC-Lawyers Incorporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

2. STATEMENT OF FACTS

6. Neither CardWorks Servicing, LLC nor Carson Smithfield LLC ever loaned Leslie Mock money.
7. Ms. Mock never had any type of contract or agreement with CardWorks Servicing, LLC or Carson Smithfield, LLC or any other related entity.
8. CardWorks and Carson are both debt collectors registered to collect in Texas.
9. Ms. Mock has not received any written correspondence from CardWorks Servicing, LLC or Carson Smithfield LLC.
10. In 2008, Ms. Mock attempted to start a small business. Unfortunately, it was not successful and she had several debts from the business that she could not pay.
11. Ms. Mock has not provided her cell phone number to any of her creditors.
12. In or around October 24, 2011, CardWorks and Carson began to use an autodialer to call Ms. Mock's cell phone frequently through the present time. CardWorks and Carson called from 1-877-487-5583, 1-877-630-5816, and 1-877-394-5975.
13. Ms. Mock received between zero and three calls a day from October 24, 2011 through the present date.
14. Between October 24, 2011 and March 19, 2012, CardWorks and Carson called Ms. Mock forty-eight (48) times on her cell phone.
15. On March 19, 2012, Ms. Mock's attorney, Amy Clark Kleinpeter, wrote to CardWorks and requested they not contact Ms. Mock further but to direct all contact to Ms. Kleinpeter's law office. Ms. Kleinpeter faxed the request to a fax number provided when she called the Card Works Servicing number.
16. Immediately after the letter, there was a slight break in the calls, with no calls coming from March 20 through March 25, 2012.

17. However, the calls resumed on March 26, 2012. Between March 26, 2012 and May 19, 2012, CardWorks and Carson called Ms. Mock an additional forty-five times. This was despite having been notified that the number they were calling was a cell phone and Ms. Mock did not give them permission to call it. These forty-five calls were willful and knowing autodialed calls to Ms. Mock's cell phone without permission

18. On May 19, 2012, in another effort to stop the calls to Ms. Mock's cell phone, her attorney faxed another letter to Card Works Servicing.

19. Despite receiving the faxed letter informing them that the calls to Ms. Mock's cell phone were without authorization and a request that they cease, CardWorks and Carson continued to use an autodialer to continue to call Ms. Mock's cell phone.

20. Between May 19, 2012 and June 28, 2012, CardWorks and Carson willingly and knowingly called Ms. Mock's cell another forty (40) times.

21. As this lawsuit was filed, on June 29, 2012, CardWorks and Carson continued willingly and knowingly calling Ms. Mock's cell phone without permission and in violation of the cease and desist notice.

22. At the time of filing, CardWorks and Carson had called Ms. Mock's cell phone, using an autodialer, forty-eight (48) times potentially without knowledge, followed by eighty-five (85) times willingly and with knowledge that they were calling Ms. Mock's cell phone without authorization.

23. Exhibit "A" to this petition is a call log of calls from CardWorks and Carson to Ms. Mock's cell phone as described in this petition.

CLAIMS BASED ON THE ABOVE FACTS

24. The above referenced statement of facts is incorporated by reference for the following causes of action.

Cause of Action #1—Violations of the Telephone Consumer Protection Act

25. The facts stated above demonstrate that Defendant violated the Telephone Consumer

Protection Act.

26. Defendants, and each and every one of them, and at all times material and relevant hereto, owned, operated and/or controlled “customer premises equipment” as defined by the TCA, 47 U.S.C. § 153(14), that originated, routed, and/or terminated telecommunications.

27. Defendants, and each and every one of them, and at all times material and relevant hereto, engaged in “interstate communications” as defined by the TCA, 47 U.S.C. § 153(22).

28. Defendants, and each and every one of them, and at all times material and relevant hereto, engaged in “telecommunications” as defined by the TCA, 47 U.S.C. § 153(43).

29. Defendants, and each and every one of them, and at all times material and relevant hereto, used, controlled and/or operated “wire communications” as defined by the TCA, 47 U.S.C. § 153(52), that existed as instrumentalities of interstate and intrastate commerce.

30. Defendants, and each and every one of them, and at all times material and relevant hereto, used, controlled and/or operated “automatic telephone dialing systems” as defined by the TCPA, 47 U.S.C. § 227(a)(1) and 47 C.F.R. 64.1200(f)(1).

31. The Defendants, and each and every one of them, and at all times material and relevant hereto, unfairly, unlawfully, intentionally, deceptively and fraudulently violated the TCPA, 47 U.S.C. § 227, et seq. and 47 C.F.R. 64.1200, et seq.

32. The violations of the Defendants, and each and every one of them, and at all times material and relevant hereto, include, but in no manner shall they be limited to, the following:

- a. The Defendants, and each and every one of them, and at all times material and relevant hereto, used automatic telephone dialing systems that had capacity to store or produce telephone numbers using random or sequential number generation and dialed the telephone number associated with the Plaintiff.
- b. Defendant placed automated or prerecorded messages on Plaintiff’s cellular telephone voice mail, in violation of 47 U.S.C. § 227(b)(1)(A)(iii).

33. The acts and/or omissions of the Defendants, and each and every one of them, and at all times material and relevant hereto, as described in this Civil Action Complaint were done unfairly, unlawfully, intentionally, deceptively and fraudulently with the express and sole purpose of unfairly, unlawfully, intentionally, deceptively and fraudulently coercing Plaintiff to pay the alleged debt despite Plaintiff owing no obligation.

34. The acts and/or omissions of the Defendants, and each and every one of them, and at all times material and relevant hereto, as described in this Civil Action Complaint were done unfairly, unlawfully, intentionally, deceptively and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.

35. The acts and/or omissions of the Defendants, and each and every one of them, and at all times material and relevant hereto, as described in this Civil Action Complaint were not acted or omitted pursuant to 47 C.F.R. 64.1200(f)(2) (regarding "emergency purposes"), nor 47 C.F.R. 64.1200(f)(3) (regarding "established business relationships").

36. As a causally-direct and legally proximate result of the above violations of the TCPA, the Defendants, and each and every one of them, and at all times material and relevant hereto, caused the Plaintiff to sustain damages as a result of their innumerable telephone calls that harassed, annoyed and abused Plaintiff, disturbed the peace and tranquility of her home.

37. As a causally-direct and legally proximate result of the above violations of the TCPA, the Defendants, and each and every one of them, and at all times material and relevant hereto, are liable to the Plaintiff for declaratory judgment that the Defendants' conduct violated the TCPA, and Plaintiff' actual damages, statutory damages, treble damages, and costs and attorney fees.

38. Plaintiff received over 48 telephone calls of an artificial and/or prerecorded nature entitling Plaintiff to Five Hundred Dollars and No Cents (\$500.00) for each artificial and/or prerecorded telephone call pursuant to the TCPA, 47 U.S.C. § 227(d)(3)(B), from the Defendants, and each and every one of them, in the amount of over \$24,000 for known calls (plus \$500 for each call not logged by Plaintiff and/or his phone).

39. The Defendants, and each and every one of them, caused an additional 85 more telephone calls of an artificial and/or prerecorded nature to be placed willfully and/or knowingly entitling Plaintiff to a maximum of treble damages in the amount of \$127,500 for known calls (plus \$1500 for each call not logged by Plaintiff and/or her phone) pursuant to the TCPA, 47 U.S.C. § 227(d)(3).

JURY DEMAND

40. Plaintiffs make demand for trial by jury and tenders the appropriate fee.

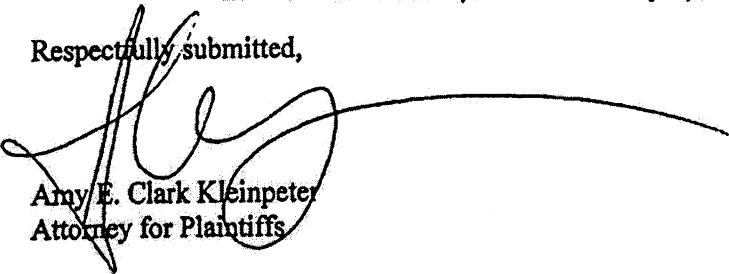
PRAYER.

For these reasons, Plaintiffs asks they have judgment against Defendants for the following:

- a. Award Plaintiff \$500 in statutory damages for each violation of the TCPA, pursuant to 47 U.S.C. § 227(3)(B);
- b. Award Plaintiff an amount equal to three times the statutory damages awarded under 47 U.S.C. § 227(3)(B), for Defendant's willful and knowing violations of the TCPA;
- c. Enter an Order enjoining Defendant from using an "automatic telephone dialing system" to place debt collection calls to consumers' cellular telephones without their express consent or permission;
- d. Enter an Order enjoining Defendant from placing automated or prerecorded messages on cellular telephone voice mail systems without the express consent or permission of the consumer;
- e. Prejudgment and post-judgment interest as allowed by law;
- f. Costs of suit;
- g. General relief; and

h. All other relief, in law and in equity, to which Plaintiffs may be entitled.

Respectfully submitted,


Amy E. Clark Kleinpeter
Attorney for Plaintiffs

State of Texas Bar Number: 24043761

Hill Country Consumer Law
12731 Research Blvd.; Bldg A, Suite 103
Austin, TX 78759
Phone: (512) 850-5290
Fax: (626) 737-6030
amyck1@gmail.com

Mock Petition

Exhibit "A" – Autodialer calls to Lesley Mock's Cell Phone from CardWork Services

1	10/24/11 09:10am	Missed	18774875583
2	10/24/11 11:46am	Missed	18774875583
3	10/24/11 12:45pm	Missed	18774875583
4	11/03/11 12:06pm	Missed	18774875583
5	11/03/11 01:49pm	Missed	18774875583
6	11/03/11 03:09pm	Missed	18774875583
7	11/05/11 09:38am	Missed	18776305816
8	11/05/11 02:25pm	Missed	18776305816
9	11/15/11 07:09pm	Missed	18774875583
10	11/21/11 07:04pm	Missed	18776305816
11	11/23/11 06:05pm	Missed	18774875583
12	11/26/11 09:00am	Missed	18774875583
13	11/28/11 10:42am	Missed	18776305816
14	11/28/11 12:37pm	Missed	18776305816
15	11/29/11 04:49pm	Missed	18774875583
16	11/30/11 05:07pm	Missed	18774875583
17	12/05/11 07:29pm	Missed	18774875583
18	12/06/11 06:02pm	Missed	18774875583
19	12/13/11 06:01pm	Missed	18774875583
20	12/16/11 09:46am	Missed	18774875583
21	12/20/11 12:41pm	Missed	18774875583
22	12/23/11 03:55pm	Incoming	18774875583
23	12/28/11 04:27pm	Missed	18774875583
24	12/29/11 03:43pm	Missed	18774875583
25	01/09/12 12:02pm	Missed	18776305816
26	01/13/12 04:34pm	Missed	18774875583
27	01/23/12 06:28pm	Missed	18776305816
28	01/30/12 07:19pm	Missed	18776305816
29	01/31/12 01:22pm	Missed	18776305816
30	02/09/12 05:49pm	Missed	18774875583
31	02/13/12 07:52pm	Missed	18776305816
32	02/16/12 05:24pm	Missed	18774875583
33	02/18/12 02:01pm	Missed	18776305816
34	02/20/12 07:29pm	Missed	18776305816
35	02/25/12 01:19pm	Missed	18776305816
36	02/27/12 02:45pm	Missed	18774875583
37	02/28/12 07:24pm	Missed	18774875583
38	02/29/12 10:05am	Missed	18774875583
39	02/29/12 02:35pm	Missed	18774875583
40	03/01/12 04:20pm	Missed	18774875583
41	03/03/12 08:57am	Missed	18776305816
42	03/05/12 07:28pm	Missed	18774875583
43	03/06/12 09:24am	Missed	18776305816
44	03/06/12 02:33pm	Missed	18776305816
45	03/07/12 02:45pm	Missed	18774875583

Mock Petition

Exhibit "A" – Autodialer calls to Lesley Mock's Cell Phone from CardWork Services

46	03/15/12 04:32pm	Missed	18774875583
47	03/17/12 09:52am	Missed	18776305816
48	03/19/12 01:19pm	Missed	18776305816
		First "Do Not Contact" Letter Faxed to Card Works Servicing	
	03/19/12		
49	03/26/12 12:17pm	Missed	18776305816
50	03/27/12 02:15pm	Missed	18776305816
51	03/27/12 06:41pm	Missed	18776305816
52	03/27/12 09:23am	Missed	18776305816
53	03/29/12 02:32pm	Missed	18774875583
54	03/31/12 01:52pm	Missed	18774875583
55	03/31/12 03:11pm	Missed	18774875583
56	03/31/12 08:55am	Missed	18774875583
57	04/02/12 11:51am	Missed	18776305816
58	04/05/12 02:23pm	Missed	18773945975
59	04/05/12 05:07pm	Missed	18773945975
60	04/07/12 01:47pm	Missed	18773945975
61	04/09/12 04:56pm	Missed	18773945975
62	04/10/12 06:31pm	Missed	18773945975
63	04/12/12 05:01pm	Missed	18773945975
64	04/12/12 12:39pm	Missed	18773945975
65	04/14/12 11:15am	Missed	18773945975
66	04/16/12 02:49pm	Missed	18773945975
67	04/16/12 12:38pm	Missed	18773945975
68	04/19/12 01:15pm	Missed	18773945975
69	04/19/12 05:36pm	Missed	18773945975
70	04/21/12 02:59pm	Missed	18773945975
71	04/23/12 04:04pm	Missed	18773945975
72	04/23/12 10:51am	Incoming	18773945975
73	04/26/12 12:35pm	Missed	18773945975
74	04/27/12 01:07pm	Missed	18773945975
75	04/27/12 03:10pm	Missed	18773945975
76	04/27/12 07:30pm	Missed	18773945975
77	04/28/12 09:07am	Missed	18773945975
78	04/30/12 02:52pm	Missed	18773945975
79	04/30/12 11:44am	Missed	18773945975
80	05/01/12 04:24pm	Missed	18773945975
81	05/03/12 01:05pm	Missed	18773945975

Mock Petition

Exhibit "A" – Autodialer calls to Lesley Mock's Cell Phone from CardWork Services

82	05/03/12 04:29pm	Missed	18773945975
83	05/10/12 03:36pm	Missed	18773945975
84	05/10/12 12:45pm	Missed	18773945975
85	05/12/12 02:41pm	Missed	18773945975
86	05/12/12 08:44am	Missed	18773945975
87	05/14/12 03:07pm	Missed	18773945975
88	05/14/12 11:43am	Missed	18773945975
89	05/17/12 02:19pm	Missed	18773945975
90	05/17/12 05:04pm	Missed	18773945975
91	05/17/12 12:47pm	Missed	18773945975
92	05/19/12 02:12pm	Missed	18773945975
93	05/19/12 03:23pm	Missed	18773945975
		Second "Do Not Contact" Letter Faxed to Card Works Servicing	
	05/19/2012		
94	05/21/12 01:55pm	Missed	18773945975
95	05/21/12 04:45pm	Missed	18773945975
96	05/21/12 08:37am	Missed	18773945975
97	05/24/12 02:13pm	Missed	18773945975
98	05/24/12 12:21pm	Missed	18773945975
99	05/29/12 05:04pm	Missed	18773945975
100	05/29/12 11:36am	Missed	18773945975
101	05/30/12 01:13pm	Missed	18773945975
102	05/30/12 11:32am	Missed	18773945975
103	05/31/12 02:58pm	Missed	18773945975
104	05/31/12 05:12pm	Missed	18773945975
105	05/31/12 12:33pm	Missed	18773945975
106	06/02/12 03:04pm	Missed	18773945975
107	06/02/12 09:28am	Missed	18773945975
108	06/04/12 11:28am	Missed	18773945975
109	06/05/12 06:57pm	Missed	18773945975
110	06/07/12 01:48pm	Missed	18773945975
111	06/07/12 03:26pm	Missed	18773945975
112	06/07/12 05:33pm	Missed	18773945975
113	06/09/12 02:20pm	Missed	18773945975
114	06/09/12 08:35am	Missed	18773945975
115	06/12/12 08:45am	Missed	18773945975
116	06/12/12 11:36am	Missed	18773945975
117	06/13/12 05:45pm	Missed	18773945975

Mock Petition**Exhibit "A" – Autodialer calls to Lesley Mock's Cell Phone from CardWork Services**

118	06/13/12 07:12pm	Missed	18773945975
119	06/14/12 02:42pm	Missed	18773945975
120	06/14/12 04:23pm	Missed	18773945975
121	06/14/12 12:54pm	Missed	18773945975
122	06/15/12 11:23am	Missed	18773945975
123	06/16/12 02:35pm	Missed	18773945975
124	06/16/12 08:30am	Missed	18773945975
125	06/18/12 02:53pm	Missed	18773945975
126	06/18/12 08:12am	Missed	18773945975
127	06/18/12 12:10pm	Missed	18773945975
128	06/21/12 02:09pm	Missed	18773945975
129	06/21/12 04:24pm	Missed	18773945975
130	06/23/12 09:44am	Missed	18773945975
131	06/28/12 02:41pm	Missed	18773945975
132	06/28/12 04:38pm	Missed	18773945975
133	06/28/12 06:49pm	Incoming	18773945975

CITATION
THE STATE OF TEXAS

CAUSE NO. 12-1274

STYLED: LESLIE MOCK VS. CARDWORKS SERVICING, LLC AND CARSON SMITHFIELD, LLC

TO: CARDWORKS SERVICING, LLC, REGISTERED AGENT CSC-LAWYERS INCORPORATION SERVICE COMPANY 211 E 7TH ST , SUITE 620 AUSTIN TX 78701

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 am on the Monday next following the expiration of 20 day after the date you were served this citation and petition, a default judgment may be taken against you."

Attached is a copy of the PLAINTIFF'S ORIGINAL PETITION, which was filed by the PLAINTIFF, in the above styled and numbered cause on the 29TH DAY OF JUNE, 2012, in the 274th District Court of Hays County, San Marcos, Texas.

Issued and given under my hand and seal of said Court at San Marcos, Texas on this the 2nd day of July, 2012.

REQUESTED BY:
Amy E. Clark Kleinpeter
Hill Country Consumer Law
12731 Research Blvd Bldg A Suite 103
Austin TX 78759
512-850-5290

BEVERLY CRUMLEY
Hays County District Clerk
Hays County Government Center
712 Stagecoach Trail, Ste. 2211
San Marcos, Texas 78666

COPY

OFFICER'S RETURN

Came to hand on the _____ day of _____ 20____ at _____ o'clock ____ M and executed the _____ day of _____ 20____ by delivering to defendant _____ in person, a true copy of this citation with a copy of the petition attached thereto on _____ day of _____ 20____ at _____ o'clock ____ M at _____ in _____ County, Texas.

Not executed. The diligence used in finding defendant being _____

Information received as to the whereabouts of defendant being _____

Service Fee:\$_____

Sworn to and subscribed before me this the _____ day of _____,

SHERIFF/CONSTABLE/AUTHORIZED PERSON
BY: _____

Printed Name of Server

NOTARY PUBLIC, THE STATE OF TEXAS

County, Texas

ORIGINAL FOR RETURN

CITATION
THE STATE OF TEXAS

CAUSE NO. 12-1274

STYLED: LESLIE MOCK VS. CARDWORKS SERVICING, LLC AND CARSON SMITHFIELD, LLC

TO: CARSON SMITHFIELD, LLC, REGISTERED AGENT CSC-LAWYERS INCORPORATION SERVICE COMPANY 211 E 7TH ST SUITE 620 AUSTIN TX 78701

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 am on the Monday next following the expiration of 20 day after the date you were served this citation and petition, a default judgment may be taken against you."

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REQUESTED BY:
Amy E. Clark Kleinpeter
Hill Country Consumer Law
12731 Research Blvd Bldg A Suite 103
Austin TX 78759
512-850-5290

BEVERLY CRUMLEY
Hays County District Clerk
Hays County Government Center
712 Stagecoach Tr. "

COPY

OFFICER'S RETURN

Came to hand on the _____ day of _____ 20____ at _____ o'clock ____ M at _____ executed the _____ day of _____ 20____ by delivering to defendant _____ in person, a true copy of this citation with a copy of the petition attached thereto on _____ day of _____ 20____ at _____ o'clock ____ M at _____ in _____ County, Texas.

Not executed. The diligence used in finding defendant being _____

Information received as to the whereabouts of defendant being _____

Service Fee: \$ _____

Sworn to and subscribed before me this the _____ day of _____.

SHERIFF/CONSTABLE/AUTHORIZED PERSON
BY: _____

Printed Name of Server

NOTARY PUBLIC, THE STATE OF TEXAS

County, Texas

ORIGINAL FOR RETURN

Cause No. 12-1274 P.O. Filed

IMMO

IIO

EX PARTE.

Vs.

Amount: \$ Paid Billed Paupers

ISSUANCE AND SERVICE

Constable 1 2 3 4 5 Private

Citation Posting Publication Attachment(s)

- TRO Temporary Injunction
- Notice Execution
- Sequestration Order of Sale
- Garnishment Attachment
- Other Abstract of Judgment

7/2/12

email - Citations Ready for Pkg

OTHER INSTRUCTIONS

Hold for: Order Copy Bond None
 Add Involved Parties
 Other

PICK UP / DELIVERY / SPECIAL INSTRUCTIONS

Pick up at Counter Put in Attorney's Box
 Mail Envelope Call

7/17/12

FILED
12 August 10 A9:40
Beverly Crumley
District Clerk
Hays District
[Signature]

CAUSE NO. 12-1274

LESLIE MOCK,

Plaintiff,

v.

CARDWORKS SERVICING, LLC AND
CARSON SMITHFIELD, LLC,

Defendants.

IN THE DISTRICT COURT OF

HAYS COUNTY, TEXAS

274TH JUDICIAL DISTRICT

**DEFENDANTS' PLEA IN ABATEMENT AND, SUBJECT THERETO,
ORIGINAL ANSWER**

COME NOW, Defendants CardWorks Servicing, LLC, and Carson Smithfield, LLC, (collectively, "Defendants"), and file this their Plea in Abatement and, subject thereto, Original Answer to Plaintiff's Original Petition (the "Petition"), respectfully showing the Court as follows:

I.
PLEA IN ABATEMENT

Plaintiff filed this lawsuit against Defendants on claims arising out of the terms, obligations, and rights under an Advanta Business Card Agreement (the "Agreement"). (A true and correct copy of the Agreement is attached hereto as Exhibit A). Because these allegations must be arbitrated pursuant to the Agreement, the Federal Arbitration Act, 9 U.S.C. §§ 1-16, and the Texas Arbitration Act, TEX. CIV. PRAC. & REM. CODE §§ 171.001-171.098, Defendants file this Plea in Abatement.

Defendants seek to abate the present proceedings on grounds that the dispute is governed by an arbitration agreement. Plaintiff entered into the Agreement, which contained an arbitration clause in connection with the extension of credit. (*See* Exhibit A.) The present dispute is within the

scope of this arbitration agreement. Therefore, Defendants request that this Court abate all proceedings in this matter, including discovery, until such time as arbitration has occurred as required by the arbitration agreement.

II.
GENERAL DENIAL

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendants generally deny each and every, all and singular, the allegations set forth in the Petition and demand strict proof thereof.

III.
AFFIRMATIVE AND OTHER DEFENSES

Plaintiff fails to state a claim upon which relief can be granted.

Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands, laches, and/or estoppel (in all its forms).

Plaintiff's claims are barred in whole or in part by the proportionate responsibility provisions of Chapter 33 of the Texas Civil Practice and Remedies Code and applicable Texas law.

Plaintiff's claims are barred in whole or in part by her failure to mitigate his damages, if any.

Plaintiff's claims are barred in whole or in part by the terms of the contract governing her account.

Plaintiff's claims are barred in whole or in part because they are subject to an arbitration agreement.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully pray that upon final hearing hereof, judgment be rendered that Plaintiff take nothing by her suit and that Defendants be granted all relief, general and special, to which they may be justly entitled.

Respectfully submitted,

LOCKE LORD LLP

/s/ B. David L. Foster by permission M.H.D.

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512-305-4700 (Telephone)
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on this the 10th day of August, 2012, on the following counsel of record, via certified mail, return receipt requested:

Amy E. Clark Kleinpeter
Hill Country Consumer Law
12731 Research Blvd.; Bldg A, Suite 103
Austin, TX 78759
512-850-5290
626-737-6030 (Facsimile)
Attorney for Plaintiff

/s/ B. David L. Foster by permission M.H.D.

Counsel for Defendants

EXHIBIT A

services and not against us. You agree that regardless of my Merchant Claims, you remain liable to us under this Agreement without any deduction and that we are not responsible for any Merchant Claims.

16. RETENTION OF DRAFTS. You agree that you will retain a copy of the draft or other document evidencing of transactions you make and that the absence of such a document or its absence of your knowledge does not relieve you from liability for an amount properly charged on the Account.

17. COLLECTIVE LIABILITY. You and/or your employees, agents, and/or assigns will be liable to us in proportion to collect all amounts you owe us, among other things, for your home and place of business. You will not escape liability as provided by applicable law, by your communications with your reporting accounts on the Account by any means including, among other things, by telephone, fax, e-mail, post, cable, letter, telegraphic, telex, facsimile, US mail, courier, delivery, and personal visit, and that, we may, in our sole discretion, file a claim against you for your specific, exemplary, representative and other damages with the Business, and on recovering such amounts or via a trial. You grant us permission to make public, our automatically debited and paid a recorded telephone.

21. **CREDIT INVESTIGATION AND REPORTING:** You authorise us to make any credit investigation we believe is proper to evaluate your credit, financial standing and employment. Including by, among other things, credit and encroaching reports from credit bureaus, credit exchanges and similar agencies in the Spanish Republic and abroad.

23. ASSIGNMENT: We may at any time, without notice to you, set or transfer any sums due on the Account, this Agreement, or our rights or obligations under the Account or this Agreement or, if we may not assign to anyone the Account or any of your rights or obligations under this Agreement, we expressly consent to and permit such assignment. If we do, you and any successor or assignee will comply with our requirements and procedures for doing so.

24. STATUTORY CHARGES: Due to the nature of Convenience Checks, we cannot charge effectively any payment on the line. We may charge up to 10% of the amount of the check to the account for the fee. We are not responsible for the fee if the customer did not receive the check.

25. AUTHORITY: We assume the authority to do the following:

SUPPLEMENT TO YOUR ADVANTA BUSINESS CARD AGREEMENT

KEEP THIS IMPORTANT SUPPLEMENT. IT CONTAINS ACCOUNT TERMS, WHICH ARE INCORPORATED AS SECTIONS 7 AND 8.A OF YOUR ADVANTA BUSINESS CARD AGREEMENT.

7. FEES AND CHARGES:

- A. There is NO ANNUAL FEE for this Account.
- B. RETURNED PAYMENT FEE - If a payment is returned to us unpaid or dishonored for any reason, we charge the Account \$35 for each such return or dishonor.
- C. DISHONORED CONVENIENCE CHECK FEE - If a Convenience Check is presented when the Account is closed or not in good standing, or if we refuse to pay a Convenience Check because it was obtained from a source other than us, or because paying it would cause the Account balance to exceed your assigned Cash Advance Credit Limit or your Account Credit Limit, or for any other reason, we charge the Account \$35.
- D. LATE PAYMENT FEE - If we do not receive at least the minimum periodic payment in the manner and by the time of day on the Payment Due Date specified in your periodic billing statement, we charge the Account a late fee. The late fee is \$19 on balances under \$250 and \$39 on balances of \$250 and over, all based on the Account balance as of the day after your Payment Due Date.
- E. DOCUMENT FEE - If we provide a copy of any periodic billing statement, sales draft, Convenience Check, payment check or other document at your request (except in connection with a billing error inquiry or dispute), we charge the Account these fees: (i) Statement Copy - \$1 (ii) Other Document Copy - \$5 (iii) Research - \$15 per hour if extensive investigation is required.
- F. OVERLIMIT FEE - If your Account balance exceeds your assigned Credit Limit at any time during a billing cycle, we charge the Account an overlimit fee. The overlimit fee is \$15 on balances under \$501, \$29 on balances between \$501 and \$1001, and \$39 on balances over \$1001, all based on the Account balance at the Billing Cycle Closing Date.
- G. CASH ADVANCE AND CONVENIENCE CHECK TRANSACTION FEES - We normally charge the Account 3% (minimum \$5) of each Cash Advance (including Convenience Checks) used, but you may be offered Cash Advances with different fees and/or with other minimum or maximum fees.
- H. MISCELLANEOUS CHARGES - You agree to pay any other amount incident to the application and for the opening, administration, and termination of the Account, including (without limitation) taxes, charges or fees and any penalties or interest thereon imposed on this Agreement or on any transaction made pursuant to this Agreement or on the Account, whether imposed by us or by others such as taxing authorities. We may advance any such tax, charge or fee and any penalty or interest thereon for you and charge that amount to the Account, and we will specifically disclose any such charge or fee that is imposed by us.
- I. BALANCE TRANSFER FEE - We normally charge the Account 3% (minimum \$5) of each Balance Transfer request we process. However, you may be offered introductory or promotional Balance Transfers with lower (or waived) fees and/or with other minimum and/or maximum fee limits.
- J. CONVENIENCE CHECK STOP PAYMENT AND BALANCE TRANSFER CANCELLATION FEES - If you or any person to whom a Convenience Check is payable ask us to stop payment on that Convenience Check, or if you ask us to cancel or change the terms of a Balance Transfer that we have undertaken at your request, we charge the Account \$29 for each such attempt we make (whether or not the attempt proves successful).
- K. WIRE PAYMENT FEE - If any payment on the Account is made in the form of a bank wire, we charge the Account \$15.
- L. FOREIGN TRANSACTION FEE - We charge the Account 3% of the US Dollar amount of any Account transaction made outside the US and/or in a currency other than US Dollars.
- M. FINANCE CHARGES ON FEES AND CHARGES - The fees and charges in Paragraphs 7-A to 7-F and 7-H to 7-K, and any Paragraph 7-L Foreign Transaction fees applied to purchase transactions, are treated as Purchases, and applicable finance charges accrue on such fees and charges from the date incurred, subject to the grace period for new Purchases described in Paragraph 8. The fees and charges in Paragraph 7-G, and any Paragraph 7-L Foreign Transaction fees applied to cash transactions, are treated as Cash Advances, and applicable finance charges accrue on such fees and charges from the date incurred until paid in full. In addition, any fees and charges may be treated as finance charges when assessed, may affect the disclosed periodic and annual percentage rates for the billing cycles in which they are assessed, and may be subject to any minimums applicable to Account finance charges.

8. FINANCE CHARGES:

- A. Account APR - The Account Annual Percentage Rate ("APR") on Purchases (including Purchase transactions, unpaid Purchase finance charges and Purchase-related fees and charges) and on Balance Transfers (including Balance Transfer transactions, unpaid Balance Transfer finance charges and Balance Transfer-related fees and charges) is 9.99%. The Account APR on Cash Advances (including Cash Advance transactions, unpaid Cash Advance finance charges, and Cash Advance-related fees and charges) is the Variable Rate Index (explained below) plus 25.99%. The Variable Rate Index for any billing cycle is chosen by us from among the Prime Rates

published in The Wall Street Journal's "Money Rates" section during the three (3) months prior to the month which contains that billing cycle's Billing Cycle Closing Date. The minimum Variable Rate Index used on your Account is 4.00%. (Note: That published Prime Rate is merely a pricing index. It is not necessarily, and should not be deemed by you to represent, the lowest or "best" interest rate available from us or any other lender at any particular time.) Your account may be eligible for promotional offers from time to time. In such cases, the APRs and other terms of the promotional offer(s) apply so long as you make all payments when due, do not go over your credit limit, and your Account remains open and in good standing.

Notwithstanding the rate calculations described above, if you default under this Agreement, we may increase each Account APR and/or any introductory or promotional APR to a Default APR without giving you additional notice. The Default APR may be up to the higher of the Account APR plus 3%, or the Variable Rate Index plus a Default Margin of up to 28.99%. We may also incrementally increase the Default APR upon subsequent defaults until the Default APR reaches the higher of these two components.